CGIT-1/EPFA/86 OF 2021 06.9.2022

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1

MUMBAI

Present

Smt.Pranita Mohanty

M/s. Standard Shipping .... Appellant

Vs

Assistant Provident Fund Commissioner ... Respondent

Bandra

Presence:

For the Appellant : Mr.P.M.Bhagat, Adv

For the Respondent : Mrs. Kashmira Sawant, Adv

ORDER

This order deals with the admission of the appeal and a separate petition filed by the appellant praying waiver of the condition prescribed u/s 7 O of the Act directing deposit of 75% of the assessed amount, as a pre condition for filing the appeal, for the reasons stated in the petitions. This appeal has been filed by the appellant challenging the order dt

9/4/2021after expiry of the period prescribed for filing the appeal. Hence this Tribunal had heard the submission on condo nation of delay and by order dt 24/11/2021 passed the order condoning the delay. Now the matter has come up for consideration of the petition filed u/s 7 O of the Act and admission of the appeal.

Copy of the petition being served on the respondent, learned counsel for the respondent appeared and participated in the hearing by filing written objection to the petition filed u/s 7O of the Act. A prayer has been made by the appellant for waiver/reduction of the pre deposit amount contemplated u/s 7 -O of the Act. The learned counsel for the appellant submitted that the impugned order has been passed without application of mind and in a mechanical manner. The appellant establishment is a partnership farm engaged in the business as a Custom House Agent being granted license by the customs Department. Basically it acts as a clearing and forwarding agent having no fixed no of employees as the said no varies on the basis of the volume of work assigned. At no point of time it had employed 20 or more persons. The establishment had submitted on line application voluntarily for allotment of code no in response to the Amnesty Scheme declared by the Govt in 2016. The code no was allotted retrospectively from 2011. Soon thereafter the establishment made deposit of both employer share and employees share from the date of coverage. But the commissioner initiated an inquiry u/s 7A of the Act for the period 2006 to 2011and passed the order on 9/4/2021 assessing Rs37,09,692/ illegally. He also submitted that the inquiry started on the basis of a complaint made by a person claiming to be an employee of M/S Ocean Voyager being employed by on Mr Lohiya. That Ocean Voyager is a company having distinct identity and the commissioner having no power to decide the employer employee relationship, passed the order holding the said person as the employee of the appellant.

Though the authorized representative of the establishment had extended all necessary co-operation and produced all the documents as called for, the commissioner while adjudicating the matter took a wrong and misconceived view and without identifying the beneficiaries and without examining the applicability of the Act to the establishment for the anti dated period passed the order of assessment. The entire determination being illegal is liable to be set aside. The amount so determined is not payable to any one as the beneficiaries have not been identified. On behalf of the appellant reliance has also been placed in the case of **APFC** vs **M/S Nandalal**, decided by the Hon'ble High Court of Patna to submit that the commissioner can not pass the order on the basis of mathematical calculation as if Tax is assessed, which is based upon the report of the E O only. He thereby submitted that the impugned order suffers from patent illegality and the appellant has a fair chance of success. Insistence for the deposit in compliance of the provisions of sec 7-O of the Act will cause undue hardship to the appellant.

In reply the learned counsel for the respondent, while supporting the impugned order as a reasoned order pointed out the very purpose of the beneficial legislation and insisted for compliance of the provisions of sec 7-O by depositing 75% of the assessed amount. Learned counsel for the Respondent also cited the order passed by the Hon'ble High Court of Madras in the case of M/S JBM Auto System Pvt Ltd VS RPFC , to submit that the Tribunal can not grant waiver in a routine manner which will have the effect of defeating the very purpose of the Act.

Here is a case where the Respondent before admission of the appeal had attached the Bank account of the Appellant and recovered Rs 4,58,282/- that amount is lying with the Respondent as a part recovery of the assessed amount.

In the case of **M/S Benars Valves Ltd &Others vs Commissioner of Central** Excise, decided by the Hon'ble Supreme Court, it has been held that ***"if on a cursory glance it appears that the demand raised has no leg to stand, it***

would be undesirable to require the assesse to pay the full or a substantial part of the assessed amount." Keeping the said principle in view, in this case it is not felt proper to direct the appellant to deposit any further amount towards compliance of the provisions of sec 70 of the Act. The respondent is directed to deposit the amount recovered as mentioned above in this Tribunal in form of FDR in the name of the Registrar of the Tribunal initially for a period of one year with provision of auto renewal. This direction shall be complied by the respondent within one month from the date of the order. Execution of the impugned order shall remain stayed till disposal of the appeal. List the matter on ----30/11/2022 -------- for filing of reply by the Respondent.

[redacted]

PRESIDING OFFICER

CGIT-1 MUMBAI